

Central Valley Regional Water Quality Control Board
13 August 2009 Board Meeting

Response to Comments for the
Elgin Mine
Draft Cleanup and Abatement Order

The following are Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) staff responses to comments submitted by responsible parties and other interested parties regarding the draft Cleanup and Abatement Order (Order) for the Elgin Mine in Colusa County. In the Hearing Procedures proposed by the Board's Prosecution Team, comments regarding the proposed Order were required to be submitted to the Central Valley Water Board by 5:00 p.m. on 17 July 2009 to receive full consideration, and this date was extended by the Board's Advisory team to 23 July 2009.

The Central Valley Water Board received comments regarding the draft Order for the Elgin Mine from Homestake Mining of California (Homestake) and Elgin Energy Company. The submitted comments were accepted into the record, and are summarized below, followed by Board staff responses.

HOMESTAKE MINING COMPANY OF CALIFORNIA COMMENTS

General Comments– Homestake made a number of comments on the Draft Order in their 23 April 2009 letter and in their subsequent 1 July 2009 letter.

COMMENT NO. 1, April 23, 2009 letter, page 1. Homestake has never operated the Elgin Mine, nor has it owned or leased the property on which the Elgin Mine is located.

Homestake states that, "Homestake did hold a mining exploration lease signed with Terhel Farms in 1978 and terminated in 1992. The areas covered under that lease included parcels adjacent to the Elgin Claim, but not the Elgin Claim itself. Homestake thus was never involved on the Elgin parcels, having been refused access by the owners."

RESPONSE: Homestake leased land around the Elgin Mine property and retort area, with the lease reserving the right of the property owner to use the property for livestock grazing and other agricultural uses as long as it did not interfere with mining. Also during the time of the lease, Homestake did mining exploration in the area, which would include cutting roads to drill pads, developing drill pads and possibly trenching. Some of these roads, pads and trenches would be located in the mineralized zone. This construction steepened slopes and removed vegetation that would have increased erosion for some period of time. However, the Central Valley Water Board currently does not have the data necessary to evaluate any potential contaminant contributions from the land controlled by Homestake adjacent to the Elgin Mine. Should the Board obtain information showing that Homestake has legal responsibility for contamination discharged from land that they controlled, the Board may revisit the issue to compel Homestake's participation in future cleanup actions.

COMMENT NO. 2, July 1, 2009 letter, page 3. Homestake also unequivocally asserts that it has no liability with respect to the mine and mining waste addressed by the Elgin Mine CAO.

Homestake contends that, “Contrary to the assertion in the June 24th letter, Homestake did not have any lease giving it “exclusive possession of the [Elgin] mining property.” Homestake had no lease on the Elgin Mine property. While its mining exploration and development lease with Terhel Farms and Bonneville Industries listed the general area in which the Elgin Mine is located, the two patented mining claims on which the Elgin Mine and its retort were located were not covered by the lease, but were separately owned and controlled by another party. During that period when Homestake was engaged in limited exploratory work in the area, its personnel contacted the owner of the patented mining claims covering the Elgin Mine site, but were unable to negotiate an exploration lease for the property.”

RESPONSE: After further review of Homestake’s 23 April and 1 July 2009 letter and information in Central Valley Water Board case files, staff concurs that the Central Valley Water Board should currently remove Homestake from the Elgin Mine Order at this time. However, if future information is obtained that indicates that Homestake leased, owned, operated, or caused mining waste to be deposited at or in the immediate vicinity of the Elgin Mine, the Order may be revised to include Homestake and the land formerly controlled by Homestake, which is not currently a part of this Order.

COMMENT NO. 3, July 1, 2009 letter, page 4. The proposed timeline in the CAOs is unrealistic and must be substantially extended to allow the parties an opportunity to coordinate and develop a through Conceptual Site Model which will define the studies required to characterize and quantify mercury loading to Sulphur Creek from the various sources.

RESPONSE: The proposed timeline in the Order was governed by the Central Valley Water Board’s *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) and the *Actions and Schedule to Achieve Water Quality Objectives* in Section IV of the Basin Plan. This section requires that, “Cleanup actions at the mines [Table IV-6.4] shall be completed by 2011.” The timelines proposed in the Draft CAOs have been developed with this target in mind.

COMMENT NO. 4, July 1, 2009 letter, page 6. Determination of Background.

Homestake states that, “A critical initial step in the investigative process under these orders should be the characterization of all sources of mercury loading to Sulphur Creek, including reliable estimates of loading from natural background and non-mining anthropogenic sources.”

“The CAOs adopt the TMDL objective of returning the Sulphur Creek watershed to pre-mining baseline conditions. The TMDL Report identifies ... That first step should include not simply better characterization of background mercury concentrations, but also a much better understanding of

the significance of mining waste in relation to natural and other anthropogenic activities in contributing mercury to Sulphur Creek.”

“That level of characterization is required if the Regional Board is going to develop an appropriate response through this CAO. Certainly we need to know what mining waste is there, what pathways exist for mercury in that waste to reach the creek, the conditions under which mercury in that waste would move down that pathway, and the volumes.”

“But if the objective of the CAO is to return Sulphur Creek to pre-mining conditions, we need to have greater certainty than the current reports provide regarding the total mercury level in Sulphur Creek contributed by mining. We will have little assurance that time and money expended addressing the existing mining waste will improve conditions in the creek without significantly better information not just on the fate and transport of mercury from the mining waste, but also on the mercury contributions from other anthropogenic activities and natural processes.”

RESPONSE: Central Valley Water Board staff concurs that characterization of all sources of mercury loading and other constituents of concern to Sulphur Creek is a critical step in the investigative process to assess background levels for all constituents of concern. Therefore, the Order requires that, “The Characterization Plan shall assess the nature and extent of mining waste discharged at the site and the potential threat to water quality and/or human health. The Characterization Plan shall describe the methods that will be used to establish background levels for soil, surface water, and ground water at the site, and the means and methods for determining the vertical and lateral extent of the mining waste.”

ELGIN ENERGY COMPANY COMMENTS

Elgin Energy Company (EEC) has been granted rights to develop the potential sources of energy associated with the Elgin Mine property. EEC is separate and apart from the Discharger, Jose Lucientes, et al. EEC is not a PRP and has had no prior involvement with mining operations that have occurred at the Elgin Mine site. EEC submitted comments and requested Designated Interested Persons status for purposes of the Order in their 7 July 2009 letter.

EEC COMMENT NO. 1, July 7, 2009 letter. The EEC is not responsible for the existing mercury levels by any means or in any manner as a result of the mercury mining operations the have occurred at the Elgin Mine.

The EEC comment letter continues with, “Even so, EEC, as a designated interested person, will advocate for compliance with the ultimate CAO requirements so as to pursue development of these energy sources without any encumbrances that may be posed by non-compliance with the CAO. EEC believes that achieving full compliance with the CAO for Elgin Mine as recognized by the CVRWQCB will allow the exploration of the potential energy sources without impedance related directly or indirectly with the CAO.”

RESPONSE: At this time EEC is not a named party for the Elgin Mine CAO, and Central Valley Water Board staff welcomes their proactive approach to the Order. However, if EEC were successful in pursuing potential energy sources at the Elgin Mine, any activities by

EEC that discharge or threaten to discharge “wastes” as defined in California Water Code section 13050, potentially disturb existing waste, or if EEC acquires or is determined by the Board to possess an interest in the site that gives it legal responsibility over the wastes, they may be included in future cleanup orders.